Supreme Court, U.S.
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No. 97-1993

In The

Supreme Court of the United States

October Term, 1997

SUN DRILLING PRODUCTS CORPORATION, HELLER, HICKOX, DIMELING, SCHREIBER AND PARK, DOUGLAS P. HELLER, GEORGE K. HICKOX, JR., WILLIAM R. DIMELING, RICHARD R. SCHREIBER, STEVEN J. PARK, JOHN C. TUTEN, HYPPOLETE ASTUGUE AND SUSAN REESE,

Petitioners,

v.

JERRY J. RAYBORN, SR.,

Respondent.

On Petition For Writ Of Certiorari To The Louisiana Court Of Appeal For The Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The respondent Jerry J. Rayborn, Sr. respectfully requests that this Court deny the petition for a writ of certiorari, seeking review of the Louisiana Court of Appeal for the Fourth Circuit's decision which declined to disturb the decision of the Louisiana state district court which refused the petitioners' request that it decline to exercise subject matter jurisdiction over only a few of the interrelated claims in this litigation initiated by one of the petitioners.

I. STATEMENT OF THE CASE

On December 8, 1994, a contract known as the Merger Agreement was executed by Jerry J. Rayborn ("Rayborn") and the petitioner Heller, Hickox, Dimeling, Schreiber and Park ("HHDS&P"). The Merger Agreement provided the blueprint for the sale of the majority interest in petitioner Sun Drilling Products Corporation ("Sun").

On February 21, 1995, the instruments required by the Merger Agreement to consummate the sale of the majority interest in Sun (the "Transaction") were executed by Rayborn and the individual petitioners who were actually acquiring the majority interest in Sun. Those individual petitioners are Douglas Heller, George Hickox, Jr., William Dimeling, Richard Schreiber, Steven Park and John Tuten (collectively, the "Acquirers").

The instruments consummating the Transaction are numerous and lengthy. See, index to the instruments making up the Transaction (App., *infra*, 1a-6a).

On March 17, 1997, Sun filed an action against Rayborn in Louisiana state court (the "Petition") relating to one of the instruments executed in the Transaction; specifically, the Management, Technical Services and Royalty Agreement ("Royalty Agreement").

On May 1, 1997, Rayborn responded to Sun's action by filing a Reconventional [counterclaim] and Third Party Demand ("Rayborn's Response"). The claims set forth in Rayborn's Response include compulsory counterclaims.

Rayborn's Response asserts claims to rescind the Transaction. The rescission claims were brought against those petitioners who were parties to the Transaction – that is, the Acquirers.

Rayborn's Response also asserts other claims against the Acquirers as well as against the petitioners who were not parties to the Transaction; specifically, Hyppolete Astugue, Sun's president and chief executive officer, and Susan Reese, Sun's corporate secretary and Astugue's executive assistant.

Rayborn's Response sets forth the following claims:

I – Recision Based Upon Vitiated Consent;

II – Failure of Cause;

III – Fraud;

IV – Conspiracy to Commit Fraud;

V – Breach of Fiduciary Duty;

VI – Conspiracy for Breach of Fiduciary Duty;

VII – Breach of Contract;

VIII – Conspiracy to Breach Contract;

IX – Louisiana Unfair Trade Practices and Consumer Protection Law;

X – Conspiracy for Violation of Louisiana Unfair Trade Practices and Consumer Protection Law;

XI – Tortious Interference with Contract;

XII – Conspiracy for Tortious Interference with Contract;

XIII – Violation of Article 2315 of the Louisiana Civil Code;

XIV – Conspiracy to Violate Article 2315 of the Louisiana Civil Code;

XV – Reinstatement of Royalty Agreement;

XVI – Mental and Emotional Pain and Suffering and Humiliation and Anxiety;

XVII – Conspiracy to Obstruct Rayborn from Discharging His Duties as an Officer and Director of New Sun and to Prevent Rayborn from Communicating with Other Officers and Employees of New Sun; and

XVIII – Damage to Reputation.

The petitioners then sought to have the Louisiana state district court decline to exercise subject matter jurisdiction as to Counts I-II and VII-XII of Rayborn's Response, arguing that those Counts were required to be arbitrated.

The Louisiana state district court denied the petitioners request on several basis: (1) arbitration was not

applicable; (2) arbitration had been waived; (3) arbitration would not resolve the disputes between the parties; and (4) regardless of the Counts sought to be arbitrated, the other Counts in Rayborn's Response remained to be tried.

The Louisiana Court of Appeal for the Fourth Circuit refused to disturb the ruling of the Louisiana state district court. *Sun Drilling Products Corp. v. Rayborn*, 703 So.2d 818 (La. App. 4th Cir. 1997), *writ denied*, ___ So.2d ___ (La. 1998).

The Louisiana Supreme Court declined to consider the decision below, responding to the petitioners' request by stating: "Denied." Thus, it is unknown on what basis the Louisiana Supreme Court made its decision.

II. REASONS WHY THE PETITION SHOULD BE DENIED.

The petition does not warrant review by this Court. The decision below was based upon the particular facts and circumstances in this matter which rendered arbitration inappropriate. Grounds independent from those set forth in the petition exist for the basis of the decision below. Respondent urges this Court not to waste its resources on a case that does not present any compelling reasons for review. Enough of this Court's resources have already been expended in this matter in connection with the June 25, 1998 denial of the petitioners' application for a stay pending disposition of the petition. Further, granting the petition will have no impact on litigants in general and will not clarify the law.

A. The Merger Agreement (and any arbitration clause therein) is inapplicable now that the instruments required for the Transaction have been executed.

The Merger Agreement set the agenda for the execution of the other instruments necessary to consummate the Transaction. The Merger Agreement, however, is not applicable in this case because it is those later documents executed by the Acquirers which actually consummated the Transaction. It is the Transaction which is being sought to be rescinded by Rayborn as part of his response to this Sun initiated litigation.

The situation is similar to the purchase of a new home by an individual. Initially, that person executes an Agreement to Purchase the home. Later a Contract of Sale is executed for the home in which the purchase actually takes place. Once the Contract of Sale is executed, the Agreement to Purchase would no longer be relevant to an action to rescind the sale on the home. Instead, any subsequent action to rescind the sale of the home would have to be based upon the Contract of Sale. If the Agreement to Purchase contained an arbitration clause, it would be inapplicable to an action to rescind the sale of the home.

The same is true in this case. Rayborn seeks, *inter alia*, a rescission of the Transaction. While the Merger Agreement identifying all of the instruments that would be executed by the parties in order to consummate the Transaction (like an Agreement to Purchase) set up the sale, it is those later executed documents such as the Royalty Agreement sued upon by Sun (like a Contract of

Sale) which actually consummated the Transaction. Thus, any arbitration clause in the Merger Agreement cannot be applicable in this case. See, *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944-45, 115 S. Ct. 1920, 1924-25 (1995) ("When deciding whether the parties agreed to arbitrate a certain matter (including arbitrability), courts generally (though with a qualification we discuss below) should apply ordinary state-law principles that govern the formation of contracts. The relevant state law here, for example, would require the court to see whether the parties objectively revealed an intent to submit the arbitrability issue to arbitration. This Court, however, has (as we just said) added an important qualification, applicable when courts decide whether a party has agreed that arbitrators should decide arbitrability: Courts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clea[r] and unmistakabl[e]' evidence that they did so. . . . [Any other rule] might too often force unwilling parties to arbitrate a matter they reasonably would have thought a judge, not an arbitrator, would decide.").

If prior to the execution of the instruments making up the Transaction there had there been a dispute concerning the Merger Agreement, then any arbitration clause that might exist in the Merger Agreement may have been applicable. The parties, however, are now one step removed from the Merger Agreement in that the parties have executed the instruments necessary to consummate the Transaction. Therefore, any arbitration clause in the Merger Agreement is inapplicable in this case.

B. If any arbitration clause in the Merger Agreement were applicable, its application has been waived.

This lawsuit was initiated by the petitioner Sun – not Rayborn. Thus, Sun judicially acknowledged that any right to arbitration which may previously have existed was no longer applicable.

Further, the agreements which make up the Transaction are all inter-related documents, each relying upon and consideration for each other. For example, the WHEREAS provisions of the Royalty Agreement (upon which this litigation was initiated by petitioner Sun) provides:

> WHEREAS, SDP, Heller Hickox Dimeling Schreiber and Park, a Pennsylvania general partnership, and Sun Acquisition Corporation, a Louisiana corporation ("Acquisition"), have entered into that certain Agreement dated December 8, 1994 (as amended, the "Merger Agreement"), pursuant to which Acquisition will merge with and into SDP and SDP will be the surviving corporation (the "Merger"); and
>
> * * *
>
> WHEREAS, as a condition to the Merger, Heller, Hickox, Dimeling, Schreiber and Park and Acquisition require that JJR be retained as an employee of SDP after the effective date of the Merger and that JJR be required to enter into this Agreement; and
>
> * * *
>
> WHEREAS, JJR and SDP desire to enter into a management, technical services and royalty

> agreement effective as of the date of this Agreement.
>
> NOW, THEREFORE, in consideration of the premises, mutual covenants and agreements contained herein, and for the good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows . . . :

See, excerpts from the Royalty Agreement (App., *infra*, 7a-8a). Thus, when Sun filed an action against Rayborn in Louisiana state court relating to one of the instruments executed in the Transaction (i.e., the Royalty Agreement), whatever right to arbitration which may have existed was waived.

In explaining his reasons for denying the petitioners' request to have certain of Rayborn's claims against the petitioners determined by arbitration, the Louisiana trial court recognized this waiver, stating:

> But, as Mr. Butler pointed out, the initial contract containing the arbitration provisions creates in effect all of the other contractual relationships between the parties, including the ones sued upon in Case No. 41-857 of the document in this court. Sun Drilling sought protection of this court and sought to have a contractual provision rescinded and a contractual relationship between it and Jerry Rayborn, Sr. terminated judicially, but now when the other aspects of their relationship are brought at issue, not in a separate suit, but in a Reconventional Demand [counterclaim] to that initial suit and now they seek the protection of that contract in terms of the requirement of arbitration.

See, Excerpts from Transcript of August 21, 1997 hearing before the Louisiana state district court (App., *infra*, 11a).

C. If any arbitration clause in the Merger Agreement were applicable, Rayborn may sue to rescind it on the basis that it is void *ab initio*.

The Louisiana Supreme Court has held that a party to a contract containing an arbitration clause can sue to rescind that contract in a court of competent jurisdiction on the grounds that it was void *ab initio*. *George Engine Co. v. Southern Shipbuilders Corp.*, 350 So.2d 881 (La. 1977).

In *George Engine*, the parties entered into several contracts to construct three vessels, one of which contained an arbitration clause. George Engine sued in a Louisiana state district court to rescind the contract on the ground that it was void *ab initio* because of a vice of consent through error, misrepresentation, and coercion on the part of Southern Shipbuilding at the time of the confection of the contract. Southern Shipbuilding filed a motion to stay the court proceedings, which the trial court granted, ordering George Engine to proceed to arbitration. On a writ application to the Louisiana Supreme Court to review the ruling of the trial court, the Louisiana Supreme Court stated: "The issue thus presented is whether a party to a contract containing an arbitration clause may sue to rescind that contract in a court of competent jurisdiction on the ground that it is, and was, void *ab initio*." 350 So.2d at 884.

Initially, the Louisiana Supreme Court recognized that the pertinent section of the Louisiana Arbitration

Act, La. R.S. 9:4201, presupposes the existence of a valid contract as a basis for invoking arbitration, providing:

> A provision in any written contract to settle by arbitration a controversy thereafter arising out of the contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time the agreement to submit, shall be valid, irrevocable, and enforceable, **save upon such grounds as existing law or in equity for the revocation of any contract.**

La. R.S. 9:4201 (emphasis added).

One such ground recognized by the Louisiana Supreme Court was a contract being void *ab initio*. The Louisiana Supreme Court reasoned that it "**[i]t would be an absurdity to compel arbitration of the conditions in a contract which does not exist in its entirety in legal contemplation.**" *George Engine*, 350 So.2d at 884 (emphasis added).

The Louisiana Supreme Court further explained:

> This Court's jurisdiction cannot be displaced whenever a contract contains an arbitration clause. The arbitration law and arbitration clauses in contracts do not vest in arbitrators the historic jurisdiction of the courts to determine fraud or duress in the inception of a contract. It may be said that courts are far better qualified to decide issues of this kind.
>
> * * *
>
> Nor does Section 4201 of the Arbitration Act compel arbitration of a question involving the

> validity *ab initio* of a contract containing an arbitration clause. While provisions for arbitration of controversies arising out of contracts are declared to be valid, irrevocable and enforceable, validity, irrevocability and enforceability are by the terms of Section 4201 made dependent upon 'such grounds as exist at law or in equity for the revocation of any contract.' *Stone v. Stone*, 292 So.2d 686 (La. 1974). By its very terms Section 4201 presupposes the existence of a valid contract as a basis for invoking arbitration.

Id. at 884.

In *George Engine*, the Louisiana Supreme Court found that: "[t]he case at bar involves the legal issue of the validity in its inception of the contract itself, based on the alleged lack of valid consent." 350 So.2d at 885. The Louisiana Supreme Court further explained:

> **Lack of consent, of course, is one of the grounds for revoking a contract. It is a vice which rescinds the contract from its inception. Consequently, without valid consent there is no contract** to be arbitrated. Surely a court would not be expected to compel arbitration of the conditions in a contract which does not exist in legal contemplation. Here the validity of the entire contract of which the arbitration is part is called into question by George. If the agreement lacked the valid consent of George it cannot be said that George 'voluntarily' waived its right to have the court determine whether the agreement should be rescinded and declared void *ab initio*.

Id. (emphasis added).

The issue faced by the Court in *George Engine* – that is, "the legal issue of the validity in its inception of the contract itself, based on the alleged lack of valid consent," 350 So.2d 885 – was the identical issue faced in the instant case. Further, the arbitration clause at issue in *George Engine* is substantially similar to the one at issue in the instant case. In *George Engine*, the Louisiana Supreme Court reviewed the arbitration clause at issue and found that it "evinces no intent of the parties to specifically arbitrate the issue of error in the inducement of the agreement; nor is the language in the agreement broad enough to comprehend arbitration of that issue." 350 So.2d 884. The same is true in the instant case.

The petitioners argue, based upon *Prima Paint Corp. v. Flood & Concklin Mfg. Co.*, 388 U.S. 395, 87 S. Ct. 1801 (1967), that the Federal Arbitration Act (9 U.S.C. §§ 1-14) compels arbitration of this case. The defendant in *George Engine* also relied upon the *Prima Paint* case; however, its application was expressly rejected therein by the Louisiana Supreme Court. 350 So.2d at 886.

One of the reasons given by the Louisiana Supreme Court in *George Engine* for rejecting *Prima Paint* was that it was state statutory law to be interpreted in the case. As in *George Engine*, it is also state statutory law (i.e., fraud as a vice of consent) which is being interpreted in this case.

In *George Engine*, the Louisiana Supreme Court further recognized that it was the public policy of the State of Louisiana to permit parties to a contract to be able to judicially challenge a contract, **including but not limited** to one containing an arbitration provision, on the grounds that the contract itself is void *ab initio*, holding:

> Aside from a natural reluctance to surrender the historical jurisdiction of courts to decide the legal issue presented by a petition to rescind a contract on account of error in its inducement, arbitrators are designated to arbitrate and resolve factual controversies arising out of valid contracts between the parties. They need not be lawyers and in all probability are wholly unqualified to decide legal issues. Indeed, they are not bound to apply the law. Arbitration, moreover, deprives a party of a jury trial and the right to appeal, substantial rights which should not be denied unless voluntarily and knowingly waived. It was in all probability to preserve these rights and to limit arbitration within proper bounds that the Legislature created an exception to the enforceability of arbitration provisions in contract where "grounds . . . exist at law or in equity for the revocation of any contract". La. Rev. Stat. 9:4201.

George Engine, 350 So.2d at 885.

Not uncoincidently, Section 2 of the Federal Arbitration Act is substantially similar to Section 4201 of the Louisiana Arbitration Act, providing:

> A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof . . . shall be valid, irrevocable, and enforceable, **save upon such grounds as exist at law or in equity for the revocation of any contract**.

9 U.S.C. § 2 (emphasis added). Thus, both the Louisiana Arbitration Act and the Federal Arbitration Act presuppose the existence of a valid contract as a basis for invoking arbitration as they both contain the same language providing: "save upon such grounds as existing at law or in equity for the revocation of any contract."

The latest pronouncement of this Court as to the applicability of the Federal Arbitration Act in this case supports the decision of the Louisiana Supreme Court in *George Engine*. In that case, this Court explained:

> In *Allied-Bruce [Terminix-Cos. v. Dobson* 513 U.S. 265, 115 S. Ct. 834 (1995)] we restated what our decisions in *Southland* [*Corp v. Keating*, 465 U.S. 1, 104 S. Ct. 852 (1984)] and *Perry* [*v. Thomas*, 482 U.S. 483, 107 S. Ct. 2520 (1987)] had established:
>
> > "States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause 'upon such grounds as exist at law or in equity for the revocation of *any* contract.' 9 U.S.C. § 2 (emphasis added). What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes any such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal 'footing,' directly contrary to the Act's language and Congress's intent."

Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681, 685-86, 116 S. Ct. 1652, 1655 (1996) (quoting *Allied-Bruce Terminix*

Cos. v. Dobson, 115 S. Ct. 834, 843 (1995) (emphasis in original)).

This Court then went on to explain that:

> the text of § 2 [of the Federal Arbitration Act] declares that state law may be applied "*if* that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally. Thus, generally applicable contract defenses, such as fraud, duress or unconscionability, may be applied to invalidate arbitration agreements without contravening § 2.

Doctor's Associates, 517 U.S. at 686-87, 116 S. Ct. at 1656 (citations omitted) (emphasis in original).

Thus, what the Federal Arbitration Act actually precludes is "invalidat[ing] arbitration agreements under state laws applicable *only* to arbitration provisions." *Id.* at 687, 116 S. Ct. at 1656 (emphasis in original). In other words, states are only precluded "from singling out arbitration provisions for suspect status, requiring instead that such provisions be placed 'upon the same footing as other contracts.' " *Id.* (citations omitted.) In the instant case, the Louisiana state laws sought to be applied include generally applicable contract defenses such as fraud and, thus, the Federal Arbitration Act is inapplicable.

D. Arbitration could only delay final resolution of this dispute and adversely impact the parties.

In explaining his reasons for ruling, the Louisiana state district court recognized that arbitration in this case

would have little (if any) impact on what would be tried before him:

> I am convinced that arbitration in this context, in the context of the litigation that is presented to this court, is obviously very complicated; obviously multi-faceted and involving a number of contractual relationships between these parties, would in fact lend little to the Court in terms of dispute resolution. It would resolve very little. It would be fruitless, pointless and the only issue that might be resolved by arbitration can be resolved by this Court in the context of the presentation of evidence and witnesses, which would proceed in the context of all of the claims between the parties.
>
> * * *
>
> . . . I am going to proceed as if this litigation were going to proceed with or without the [Louisiana Court of Appeal for the] Fourth Circuit's interference. Additionally, there are other issues in this litigation that need not be stayed whether I am right or wrong.

See, Excerpts from Transcript (App., *infra*, 12a-14a).

The normal advantage which arbitration provides – speedy resolution of disputes – will not occur in this case if arbitration were required. To the contrary, arbitration would delay the ultimate resolution of the disputes between the parties. Discovery, which was initiated by the petitioners, is virtually complete. The trial of this matter is set for July 20, 1998. The trial court informed counsel for the parties that this is the only matter that will be set for trial on that date. A final resolution of *all* disputes between the parties will occur at that time.

Moreover, Rayborn would be prejudiced if the petitioners were permitted to arbitrate a mere portion of this multi-faceted litigation in Philadelphia, Pennsylvania. As recognized by the Louisiana state trial court in its Reasons for Judgment (quoted above) arbitration would not advance the resolution of this dispute because most of this lawsuit would not be arbitrated and would remain ongoing before the Louisiana state court. Thus, regardless of any outcome in arbitration, the parties would continue to expend resources in litigation because a trial will occur. Further, the facts underlying Rayborn's defense to this Sun-initiated litigation are substantially similar to those portions of Rayborn's Response on which the petitioners sought arbitration. Therefore, arbitration will only needlessly delay a resolution of not only the matters sought to be arbitrated by the petitioners, but also of those matters which the petitioners acknowledge cannot possibly be subject to arbitration and of the matters brought at issue by the litigation initiated by them.

E. The petitioners' only seek to arbitrate a small portion of this lawsuit.

The pleadings filed by the petitioners in the Louisiana state trial court seeking arbitration was not directed towards the entirety of Rayborn's claims against them. See, Excerpts from Transcript (App., *infra*, 13a) ("Therefore and for those reasons the Exceptions of Lack of Subject Matter Jurisdiction as to Counts I, II, VII, VIII, IX, X, XI and XII of the Reconventional Demand [Case No.] 41-857 are denied.").

In the Application for Writ filed in the Louisiana Supreme Court, the petitioners expanded their argument as to what could be arbitrated to Counts I-IV and IX-XII of Rayborn's Response. Thus, even the petitioners acknowledge that there will be a trial in the Louisiana state district on over one-half (i.e., ten out of eighteen) of the Counts set forth in Rayborn's Response.

Counts III and IV of Rayborn's Response, however, were not at issue before the Louisiana state trial court and, accordingly, were not an issue before the Louisiana Supreme Court. Thus, those Counts cannot be at issue in this Court.

Similarly, because Counts VII and VIII of Rayborn's Response (which were at issue in the Louisiana state trial court) were not a part of the petitioners' Application for Writ in the Louisiana Supreme Court, they too were not at issue before that Court. Thus, those Counts cannot be at issue in this Court.

Regardless, even if Counts VII and VIII had been before the Louisiana Supreme Court, those Counts could not be subject to arbitration even under the petitioners' arguments. Those Counts relate to claims relating to breaches of contract. One of those contracts at issue in those Counts is the Royalty Agreement sued upon which initiated this action and the petitioners acknowledge that disputes relating to that instrument are not subject to arbitration.

Similarly, even the entirety of Counts IX-XII of Rayborn's Response cannot be subject to arbitration under the petitioners' argument. Counts IX and X, which

relate to the Louisiana Unfair Trade Practices and Consumer Protection Law, La. R.S. 51;1401, *et seq.*, alleges claims relating to violations of that statute concerning, *inter alia*, the Royalty Agreement sued upon which initiated this action. Likewise, Counts XI and XII which relate to tortious interference with a contract, allege claims relating to tortiously interfering with, *inter alia*, the Royalty Agreement sued upon which initiated this action. As aforesaid, the petitioners acknowledge that disputes relating to the Royalty Agreement are not subject to arbitration. Moreover, the only two named defendants in Count XI, Astugue and Reese (the non-Acquirer petitioners), were not parties to the Transaction. Therefore, even accepting the petitioners' arguments to be true, arbitration is precluded.

III. CONCLUSION

Accordingly, for all the foregoing reasons, Rayborn respectfully requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

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APPENDIX

MERGER OF SUN ACQUISITION CORPORATION ("SAC") into SUN DRILLING PRODUCTS CORPORATION ("SUN") pursuant to that certain Agreement dated as of December 8, 1994, as amended, by and among Jerry J. Rayborn, Sr., Jerry J. Rayborn, Jr., Jeffrey Rayborn, Sun, Heller, Hickox, Dimeling, Schreiber & Park, a Pennsylvania general partnership ("HHDS&P") and SAC

February 21, 1995

1. Agreement dated as of December 8, 1994
2. Amendment No. 1 to Agreement
3. Amendment No. 2 to Agreement
4. Jean Rayborn's Consent to Agreement
5. Letter Agreement and Waiver
6. Employment Agreement between Sun and Hyppolete J. Astugue
7. Employment Agreement between Sun and Bailey Fridge
8. Employment Agreement between Sun and Raymond Griffin
9. Employment Agreement/Consulting Agreement between Sun and Buddy Parker
10. Management, Technical Services and Royalty Agreement between Sun and Jerry J. Rayborn, Sr.
11. Real Property Lease from Jerry J. Rayborn, Sr. to Sun – Alvin, Texas
12. Memorandum of Lease – Alvin, Texas
13. Commitment for Owner's and Mortgagee's Policy of Title Insurance – Leasehold Estate, Alvin, Texas

14. Owner's Policy of Title Insurance – Leasehold Estate, Alvin, Texas

15. Real Property Lease from Jerry J. Rayborn, Sr. to Sun – Belle Chasse, Louisiana

16. Jean F. Rayborn's Consent to Belle Chasse, Louisiana Lease

17. Subscription Agreement between Sun and Jerry J. Rayborn, Sr.

18. Registration Rights Agreement between Sun and Messrs. Rayborn, Heller, Hickox, Dimeling, Schreiber, Park and Tuten

19. Subordinate Note in the original principal amount of $2,800,000 from Sun to Jerry J. Rayborn, Sr., Jerry J. Rayborn, Jr., Jeffrey Rayborn and Joel Rayborn, and Letters appointing Jerry J. Rayborn, Sr. as agent for the Subordinate Note

20. Subordinate Pledge Agreen ents between each Pledgor listed below, Sun, Jerry J. Rayborn, Sr., Jerry J. Rayborn, Jr., Jeffrey Rayborn and Joel Rayborn, and blank stock powers

    a. Douglas P. Heller
    b. George K. Hickox, Jr.
    c. William R. Dimeling
    d. Richard R. Schreiber
    e. Steven G. Park
    f. John C. Tuten

21. Shareholders Agreement between Sun, Banc One, Capital Partners II, Limited Partnership and the individuals listed on Schedule A annexed thereto

22. Pilko Environmental Assessment

23. Environmental Indemnity Agreement between Messrs. Heller, Hickox, Dimeling, Schreiber, Park and Tuten, HHDS&P, Sun and Jerry J. Rayborn, Sr.

24. Supplementation of Schedule 3.16 (product formulae) and certificate of Bailey Fridge

25. Documents Evidencing Vesting of Title to Excluded Assets from Sun to Jerry J. Rayborn, Sr.

    a. Vehicles
    b. Assignment of Lafayette Lease
    c. Transfer of Property – Intracoastal
    d. Assignment of All Products Supply Company Lease
    e. Quitclaim of Improvements

26. Intellectual Property Assignments

    a. United States
    b. Venezuela

27. Documents evidencing Barge transfer from Jerry J. Rayborn, Sr. to Sun

28. Interdrill Nigeria Termination Documents

29. Agreement of Merger

30. Documents Evidencing Cancellation of Guarantee of Jerry J. Rayborn, Sr. to First NBC Letter of Credit pursuant to Section 9.15 of Agreement

31. Agreement Regarding Extinguishment of Indebtedness of Jerry J. Rayborn, Sr. pursuant to Section 2.2(d) of Agreement

32. $318,738 Promissory Note by Jerry J. Rayborn, Sr. to Sun marked "Paid in Full" and copy of canceled check from Jerry J. Rayborn, Sr. to Sun pursuant to Section 2.2(e) of Agreement

33. Assignment of Sun Investment Portfolio Account to Jerry J. Rayborn, Sr.

34. Powers of Attorney from Jerry J. Rayborn, Jr., Jeffrey Rayborn and Joel Rayborn to Jerry J. Rayborn, Sr.

35. Letter Agreement from Messrs. Heller, Dimeling, Schreiber, Park and Tuten

36. Pro Forma Beginning Balance Sheet of Sun

37. Landlord Waiver – North Post Oak Business Center, Houston, Texas

38. Guaranty Agreement by HHDS&P in favor of Jerry J. Rayborn, Sr. regarding payments under Royalty Agreement

39. Management Agreement between HHDS&P and Sun

40. Certificate of Jerry J. Rayborn, Sr., as President of Sun and in his individual capacity, Re: Representations and Warranties

41. Officer's Certificate from HHDS&P Re: Representations and Warranties

42. Officer's Certificate from SAC Re: Representations and Warranties

43. Legal Opinion of Reed, Smith, Shaw & McClay delivered pursuant to Agreement

44. Legal Opinion of Sessions & Fishman, L.L.P. delivered pursuant to Agreement and Certificate of Sun to Sessions & Fishman, L.L.P.

45. Letter from Alaskan counsel regarding statute of limitations for tort claims

46. Sun's Secretary's Certificate

47. Proxy of Jean F. Rayborn, as Director of Sun, to Jerry J. Rayborn, Sr.

48. Proxies of John Jeffrey Rayborn, Joel Parker Rayborn and Jerry J. Rayborn, Jr., as Shareholders of Sun, to Jerry J. Rayborn, Sr.

49. Certified Copy of Articles of Incorporation of Sun issued by the Secretary of State of the State of Louisiana

50. Certified Copy of Amended and Restated Articles of Incorporation of Sun issued by the Secretary of State of the State of Louisiana

51. By-Laws of Sun, as amended by Amendment No. 1 to By-Laws of Sun

52. Waiver Agreement regarding Section 11 of By-Laws of Sun between Jerry J. Rayborn, Sr., Jerry J. Rayborn, Jr., Joel Rayborn, Jeffrey Rayborn and Sun

53. Certificate of Existence for Sun issued by the Secretary of State of the State of Louisiana

54. Certificate of Good Standing for Sun issued by the Department of Revenue and Taxation, State of Louisiana

55. Certificate of Foreign Qualification for Sun issued by the Secretary of State of the State of Texas

56. Certificate of Good Standing for Sun issued by the Comptroller of Public Accounts for the State of Texas

57. Certificate of Compliance for Sun issued by the Secretary of State of the State of Alaska

58. Certificate of Status for Sun from Alberta, Canada

59. Certificate of Good Standing for Sun from Scotland

60. Certificate of Good Standing for Sun Drilling Products Corporation de Venezuela, C.A. ("Sun de Venezuela")

61. Director's Certificate Re: Articles of Incorporation of Sun de Venezuela

62. Copy of Certificate No. 1 representing Sun's shares of Sun de Venezuela

63. Certified copy of Articles of Incorporation and Modifications of Sun de Venezuela from the Department of Registry, Caracas, Venezuela

64. SAC Secretary's Certificate

65. Certificate of Existence for SAC issued by the Secretary of State of the State of Louisiana

66. Certificate of Good Standing for SAC issued by the Department of Revenue and Taxation, State of Louisiana

67. Unanimous Consent of Board of Directors of SAC

68. Incumbency Certificate of HHDS&P and Certified Partnership Agreement from HHDS&P

69. Written Consent in Lieu of Meeting of General Partners of HHDS&P

70. Cancelled shares of SAC

71. Affidavit and Indemnification Agreement by Jerry J. Rayborn, Sr. as to lost shares of Sun

72. Cancelled shares of Sun pre-merger stock

73. Copies of share certificates of Messrs. Heller, Hickox, Dimeling, Schreiber, Park and Tuten representing their respective shares of Sun

See Signature Page for Legend

MANAGEMENT, TECHNICAL SERVICES AND ROYALTY AGREEMENT

THIS AGREEMENT is entered into as of this 21st day of February, 1995, between SUN DRILLING PRODUCTS CORPORATION, a Louisiana corporation, ("SDP"), and JERRY J. RAYBORN, SR. ("JJR").

WHEREAS, SDP, Heller Hickox Dimeling Schreiber & Park, a Pennsylvania general partnership, and Sun Acquisition Corporation, a Louisiana corporation ("Acquisition"), have entered into that certain Agreement dated December 8, 1994 (as amended, the "Merger Agreement"), pursuant to which Acquisition will merge with and into SDP and SDP will be the surviving corporation (the "Merger"); and

WHEREAS, as a result of the Merger, JJR will receive total consideration in cash and notes of $10,200,000.00 and certain debts of JJR and his affiliates owed to SDP aggregating approximately $2,200,000.00 will be forgiven;

WHEREAS, as a condition to the Merger, Heller, Hickox, Dimeling, Schreiber & Park and Acquisition required that JJR be retained as an employee of SDP after the effective date of the Merger and that JJR be required to enter into this Agreement; and

WHEREAS, immediately subsequent to the effective date of the Merger, JJR will own twenty-five percent (25%) of the issued and outstanding stock of SDP;

WHEREAS, prior to the effective date of the Merger, JJR had been President of SDP; and

WHEREAS, JJR and SDP desire to enter into a management, technical services and royalty agreement effective as of the date of this Agreement.

* * *

IN WITNESS WHEREOF, SDP has caused this Agreement to be duly executed in duplicate, and JJR has hereunto set his hand, on the day and year first above written.

SUN DRILLING PRODUCTS CORPORATION
a Louisiana Corporation

By: /s/ Hyppolete J. Astugue
Name: _____
Title: _____

/s/ Jerry J. Rayborn, Sr.
Jerry J. Rayborn, Sr.

LEGEND

THE RIGHTS, TITLE AND INTEREST OF ANY HOLDER OF THIS ROYALTY AGREEMENT ARE SECONDARY, SUBORDINATE AND INFERIOR TO THE RIGHTS, TITLE AND INTEREST OF THE HOLDERS OF THOSE TWO CERTAIN PROMISSORY NOTES DATED FEBRUARY 21, 1995, EXECUTED BY SUN DRILLING PRODUCTS CORPORATION, PAYABLE TO THE ORDER OF BANC ONE CAPITAL PARTNERS II, LIMITED PARTNERSHIP IN THE PRINCIPAL AMOUNTS OF $2,000,000 AND $4,000,000 RESPECTFULLY AS THE SAME MAY BE MODIFIED, AMENDED, RENEWED, EXTENDED, RESTATED OR REPLACED FROM TIME TO TIME PURSUANT TO A SUBORDINATION AND INTERCREDITOR AGREEMENT AMONG BANC ONE CAPITAL PARTNERS II, LIMITED PARTNERSHIP AND JERRY J. RAYBORN, SR., JERRY J. RAYBORN, JR., JEFFREY RAYBORN AND JOEL RAYBORN.

TWENTY-FIFTH JUDICIAL DISTRICT COURT

PARISH OF PLAQUEMINES

STATE OF LOUISIANA

SUN DRILLING PRODUCTS CORPORATION	NO. 41-857
VERSUS	
JERRY J. RAYBORN, SR.	DIVISION "B"
AND	
JERRY J. RAYBORN, SR.	NO. 42-278
VERSUS	
SUN DRILLING PRODUCTS CORPORATION, HYPPOLETE ASTUGUE AND SUSAN REESE	DIVISION "B"
AND	
JERRY J. RAYBORN, SR.	NO. 42-330
VERSUS	
SUN DRILLING PRODUCTS CORPORATION HELLER, HICKOX DIMELING, SCHREIBER AND PARK, DOUGLAS P. HELLER, GEORGE K. HICKOX, JR., STEPHEN G. PARK, HYPPLOETE ASTUGUE AND SUSAN REESE	DIVISION "B"

Argument and Notes of Evidence taken before the HONORABLE WILLIAM A. ROE, Judge, presiding on Thursday, the 21st day of August, 1997.

PRESENT:

GEORGE PIVACH, II, ESQ.

DOUGLAS CHRISTIAN, ESQ.

ROBERT KAUFMAN, ESQ.

Attorneys for Sun Drilling Products Corporation; Heller, Hickox, Dimeling, Schreiber and Park, Douglas P. Heller, George K. Hickox, Jr., Stephen G. Park, Hyppolete Astugue and Susan Reese

EDWARD D. WEGMANN, ESQ.
Attorney for Hyppolete Astugue and Susan Reese

PHILIP F. COSSICH, JR., ESQ.

PETER J. BUTLER, ESQ.

RICHARD PASSLER, ESQ.

LES MARTIN, ESQ.

Attorneys for Jerry J. Rayborn, Sr.

REPORTED BY:

PETER P. BORRELLO, JR.

Official Court Reporter

* * *

And in that context, several things struck me as significant. One is the issue of waiver in terms of the initial litigation being filed in this court. I understand that there are separate contracts in connection with the relationship between Mr. Rayborn and the other parties in this litigation. I understand that the plaintiffs in the initial suit were careful to make that controversy, one apparently dealing with only one contract, which itself did not contain an arbitration provision. But, as Mr. Butler pointed out, the initial contract containing the arbitration provision creates in effect all of the other contractual relationships between the parties, including the one sued upon in 41-857 of the document of this court. Sun Drilling sought the protection of this court and sought to have a contractual provision rescinded and a contractual relationship between it and Jerry Rayborn, Sr. terminated judicially, but now when the other aspects of their relationship are brought at issue, not in a separate suit, but in a Reconventional Demand to that initial suit and now they seek the protection of that contract in terms of the requirement of arbitration. The Court has studied "George Engine versus Southern Ship Building Corporation" carefully and I agree that it is apparently on point.

I am intrigued by the argument as has been pointed out in the jurisprudence and in argument in this matter, that if the contract itself is invalid, then there is a good argument that the requirement of arbitration in that contract is unenforceable. To suggest that the choice of laws provision in that contract is enforceable, even absent the enforceability of the arbitration provision, does not stand up. If in fact I may relieve the parties of an obligation to

arbitrate because of the possibility – because the issue to be arbitrated and that is the validity of the contract itself is not enforceable, then surely a choice of laws provision in that same enforceable contract is not enforceable. That again, I believe, is a reasonable position to take in view of the fact that the parties seeking to enforce arbitration, first sought the protection of this court. First sought litigation as a means of addressing the disputes between them, rather than arbitration.

Finally, as a practical matter, one final compelling reason for me to believe that arbitration – that these exceptions should not be granted – well, first of all, back to the phrase of, "alternative means of dispute resolution." I am compelled to disregard the general language favoring arbitration in the jurisprudence because of the fact that I am convinced that arbitration in this context, in the context of the litigation that is presented to this court, is obviously very complicated; obviously multi-facetted and involving a number of contractual relationships between these parties, would in fact lend little to the Court in terms of dispute resolution. It would resolve very little. It would be fruitless, pointless and the only issue that might be resolved by arbitration can be resolved by arbitration can be resolved by this Court in the context of the presentation of evidence and witnesses, which would proceed in the context of all of the claims between the parties.

Finally, one compelling aspect of this legal issue is the issue of appeal. Were I to grant these exceptions and order or allow the arbitration, the result would be as follows: "A district court's refusal to stay its proceedings pending arbitration of a dispute, is not a final appealable

order." On the other hand, "The Court of Appeals freely refute a district court's refusal to compel parties to return to arbitration and a refusal to stay a party's action concerning arbitration is an appealable judgment, which may be heard by the Court of Appeals." Gentlemen, not that I don't have faith in my own judgment, not that I don't trust that you do, but under these circumstances in these situations, I am giving solace or its [sic] somewhat eases my mind that the denial of these exceptions, which I think is the proper ruling in this matter, allows you to take an appeal, I believe, to the appellate courts. And thus at the outset resolve the issue on the appellate level so that we may either proceed with this litigation, as I believe it should proceed or have the appellate court stay these proceedings and allow or compel you to arbitrate the issues of the validity of the contract.

Therefore and for those reasons, the Exception of Lack of Subject Matter Jurisdiction as to Counts, I, II, VII, VIII, IX, X, XI, and XII of the Reconventional Demand in 41-857 are denied.

MR. PIVACH: Your Honor, we respectfully object to the Court's decision on your denial of our exceptions. We are mindful of your reasons for denial and we understand the Court's position. With that in mind, Your Honor, would we be allowed to have stay of time sufficient enough for us to seek writ to the Court of Appeals?

THE COURT: No. I will not stay these proceedings. My suggestion is to seek a stay from the Fourth Circuit.

MR. PIVACH: Is there any particular reason, Your Honor? With the voluminous nature of the pleadings that

have been filed in this matter so far, if we can get a quick resolution of that through the Court of Appeals –

THE COURT: Because I am not going to bet against myself. If I thought I was going to be reversed, I would have ruled the other way. I think I made the right ruling. I think that the Fourth Circuit is going to affirm me. And I am not going to bet against myself. I am going to proceed as if this litigation were going to proceed with or without the Fourth Circuit's interference. Additionally, there are other issues in this litigation that need not be stayed whether I am right or wrong.

* * *

CERTIFICATE

I, PETER P. BORRELLO, JR., Official Court Reporter, do hereby certify that the foregoing one hundred and one (101) pages is a true and correct transcript of my stenographic notes taken down by me and transcribed to the best of my ability and understanding of the above-entitled and numbered cause.

/s/ Peter P. Borrello, Jr.
PETER P. BORRELLO, JR.
Official Court Reporter